NRJ TV LLC
722 S. Denton Tap Road, Suite 130
Coppell, TX 75019

June 4, 2012

VIA E-MAIL

Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Continuation of Cable Viewability Requirements for Digital Must-Carry Television Stations CS Docket No. 98-120

Dear Chairman Genachowski:

As the CEO of NRJ TV LLC,[1] I write this letter to express my strong support for the Commission's proposal of a three-year extension of the rule requiring cable operators to make must-carry stations viewable to all cable television subscribers as set forth in the agency's February 2012 Notice of Proposed Rulemaking in the above-referenced docket. With the viewability rule slated to sunset on June 12, 2012, the Commission must act immediately to prevent the unquestionable damage that the rule's absence will cause to low-income and minority households and, in particular, those viewers of foreign language and other specialty programming who are dependent on the viewability rule for continued access to such programming via their analog television sets. A failure to extend the viewability rule would cause serious service disruptions to these viewers, all of whom are vitally important to the NRJ TV stations.

NRJ TV's stations are all independent and focus on providing unique and diverse programming not available elsewhere in their respective markets. Without any major network affiliations, NRJ TV depends on must-carry to preserve its cable carriage rights. As is typical of must-carry stations, NRJ TV needs access to all cable subscribers in its markets in order to continue providing consumers with the important local broadcast services NRJ TV offers. If NRJ TV's cable audience shrinks and services must be curtailed, all viewers of NRJ TV's stations – over-the-air, cable, satellite and telco – will suffer the consequences.

---

[1] NRJ TV, through its affiliates and subsidiaries ("NRJ TV"), is the licensee of full-power television stations KCNS (TV), San Francisco, CA; WMFP (TV), Lawrence, MA; WSAH (TV), Bridgeport, CT; and WTVE (TV), Reading, PA. In addition, NRJ TV is the proposed assignees of KSCI (TV), Long Beach, CA; KIKU (TV), Honolulu, HI; and Class A station W50DZ-D, Trenton, NJ.

In particular, the loss of the protections currently afforded by the viewability rule would severely impact the foreign language viewers that NRJ TV seeks to serve. NRJ TV is the proposed assignee of KSCI (TV), Long Beach, California, which is the largest Asian language television station in the United States, providing unique and diverse services to a multitude of different Asian groups in Southern California. The station broadcasts news and entertainment programming in multiple languages to the nation's largest Asian market of nearly 2.5 million consumers. NRJ TV is also the proposed assignee of KIKU (TV), Honolulu, Hawaii, which airs many foreign language programs originating from Japan and the Philippines. Absent the viewability rule, many of the foreign language viewers of these stations would lose access to the diverse and specialized programs they currently enjoy.

Congress mandated that cable systems carry local broadcast stations through the 1992 Cable Act's must-carry requirements. Congress further ensured that those stations "must be viewable on all television sets that are connected to the cable system." The Commission currently has in place rules to enforce this congressional mandate. In February, the Commission proposed extending for three years the viewability rule, because 12.6 million cable households remain analog-only and the vast majority of cable subscribers are served by "hybrid" systems that provide both analog and digital services. Even many of these consumers who do subscribe to digital tiers on one set continue to rely on analog service for second or third TV sets. As a result, the number of subscribers at risk of losing access to local stations nationwide is many millions more than the 12.6 million analog-only cable homes.

Accordingly, the FCC must follow through on its proposal and extend the viewability rule for three years or until such time as digital cable is available to 95 percent of cable households. Any earlier sunset of the rule would deprive consumers of programming choices and unduly harm NRJ TV and other broadcasters dependent on must carry, particularly and disproportionately those that serve niche and underserved audiences. Millions of analog households, most with average incomes under $50,000, either cannot afford or choose not to take on the added expenses of digital cable tiers and the set-top box costs required with digital services.

Allowing must-carry stations to vanish from analog homes and analog televisions by sunsetting the viewability rule would inappropriately thrust the FCC into the position of picking "winners" and "losers" in the competitive television market. Independent broadcasters already fight an uphill battle to compete in an environment dominated by large, vertically integrated companies whose revenues and economic muscle are leveraged to give their stream of products and services a major advantage over our own. And though we at NRJ TV provide our stations' communities with diverse programming choices and are committed to rigorous competition, allowing the viewability rule to sunset would significantly and negatively impact our ability to serve our local markets.

For these reasons, cable operators' claims that the rule is unduly burdensome ring hollow. The expense required of cable operators to obtain equipment needed to convert digital broadcast signals to analog has already been incurred. Retention of the rule will actually serve as an incentive for cable operators to build out digital systems—a meaningful way to free up bandwidth while allowing the viewability rule to sunset would reward a lack of investment from cable providers, further delay the deployment of digital cable systems, and deny cable subscribers access to diverse programming.

Moreover, the "solutions" put forth by the cable operators are not viable. First, the vast majority of affected viewers will be unaware of the change and will abruptly lose access to programming they now enjoy. The learning curve would be akin to the digital transition, which took three years and hundreds of millions of dollars in education. Six months is simply not enough time.

Second, the new hardware proposed by the cable operators will be required only to view must-carry stations in the basic tier, not all stations. Analog viewers may be unwilling or unable to take the steps necessary to obtain, pay for, and install new equipment, and the cable operators' proposed requirement does not provide that all analog sets in the home would be equipped. This proposal eliminates a relatively insignificant burden that has already been incurred by cable and instead shifts financial responsibility to consumers, a possibility not contemplated by Section 614 of the Communications Act. The viewability rule follows directly from the statutory mandate of Section 614 (b) (7) of the Communications Act, which requires cable operators to make every must-carry station available to every cable subscriber. The FCC recognized this unambiguous statutory imperative when it adopted the viewability rules in 2007 and it repeated that interpretation of the statute in the NPRM. The FCC has never permitted cable operators to satisfy their must-carry obligations by requiring customers to obtain new limited-use equipment like a digital transport adaptor, and it should not start now.

For the reasons stated above, the Commission should move forward to implement its sensible proposal to extend the viewability rule for another three years, recognizing that a substantial proportion of cable subscribers still rely on analog service and should continue to have full access to all broadcast services.

Sincerely,

Ted B. Bartley

Ted Bartley
CEO of NRJ TV
Phone … 972.947.3390
Email … ted@nrjventures.com